

IN THE
COURT OF APPEAL
OF THE STATE OF CALIFORNIA
Second Appellate District
Division Three
Civ. No. B 005912
(Super. Ct. No. C420153)

CHURCH OF SCIENTOLOGY OF CALIFORNIA,
Plaintiff-Appellant,
and
MARY SUE HUBBARD,
Intervenor-Plaintiff-Appellant,
- against -
GERALD ARMSTRONG,
Defendant-Respondent.

ON APPEAL FROM SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOST ANGELES
JUDGE PAUL G. BRECKENRIDGE, JR.

PETITION FOR REHEARING

Appellants Church of Scientology of California and Mary Sue Hubbard petition for rehearing and reconsideration of this Court's decision, filed December 18, 1986, dismissing the appeal herein in "the interests of judicial economy" pending "determination and judgment at the conclusion of the trial on the cross-complaint." Slip op. at 13. The ground

upon which rehearing and reconsideration is sought is that, as set forth in our letter to the Clerk of the Court on December 16, 1986, all issues concerning the cross-complaint and disposition of documents and exhibits have been mutually settled, and the settlements have been embodied in two orders issued by the Superior Court on December 11, 1986. (We attach hereto a copy of our letter of December 16, 1986 and of the two orders of the Superior Court dated December 11, 1986.)

As explained in our December 16 letter, the underlying damage claims of plaintiff and intervenor have not been settled. Thus, the issues relevant to the damage claims -- in particular, the availability and applicability, vel non, of various justification defenses and the fairness of the trial and the decision of the court below -- remain for appellate determination.

Inasmuch as those issues have been fully briefed and argued to this Court, it clearly would be in the interest of judicial economy for the Court, upon reconsideration, to reach and decide those issues at the present time.

Indeed, appellants do not understand what other remedy they have at the present time other than the present appeal. Inasmuch as Superior Court Judge Breckenridge, pursuant to the settlement, has dismissed the cross-complaint with prejudice and ordered the return to the Church

of all documents, including exhibits, the appellants do not wish to and cannot appeal from those orders. Appellants, however, do wish to and do have a statutory right to pursue their appeal from the judgment of Judge Breckenridge dismissing their complaints for damages based upon Judge Breckenridge's novel and misapplied theories of justification. Appellants also wish to and have a statutory right to appeal from that judgement based upon their claim that they were denied a fair trial. Thus, at least under the present circumstances, the only way to preserve appellants' rights to appeal from the judgment dismissing their damage claims is precisely through the vehicle of this appeal.^{1/}

^{1/} Indeed, the above discussion reveals that, with all due respect, this Court erred in its decision even if the cross-complaint and the document issues had not been settled. This is so precisely because the Superior Court in fact issued a judgment dismissing appellant's complaints. It is from that judgment, and not from a judgment or order on the cross-complaint, that appellants appealed. And the determination of the cross-complaint would not lead to a judgment from which appellants could appeal on the issue of their complaints. If, for example, the Church had won a defendant's verdict on the cross-complaint and had obtained the return of the documents, it still would have had a right to appeal from the earlier judgment dismissing its complaint for damages. Yet, after this Court dismissed its appeal from the judgment, the Church would not have had an order from which it could file a timely appeal. The anomaly created by this Court's decision is even more pronounced with respect to the intervenor, who is not a party to the cross-complaint. Under no circumstances, therefore, could there have been an order or a judgment arising out of the cross-complaint from which intervenor could have appealed. Yet intervenor clearly has a right to appeal from the earlier judgment dismissing her claim for damages.

WHEREFORE appellants respectfully request that this court reconsider its decision of December 18, 1986, and proceed to determine the merits of the appellants' appeals from the Superior Court's dismissal of their damage claims.

Dated: December 31, 1986

Respectfully Submitted,

Eric M. Lieberman

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